across the road whenever the brakes are applied with any force is an act of gross negligence for which, whatever standard of negligence is adopted as the proper one, the accused is punishable under the Penal Code.

He refers to *Empress vs. Bhutan,* 1894, 16 All. 472.

Cur. Adv. Vult.

Murray-Aynsley, J.—This appeal gives rise to an interesting point of law namely whether the degree of negligence required to support a conviction under Section 304A of the Penal Code is the same as that required to support a conviction for manslaughter under English Law. The text book writers and the Indian decisions seem to support the view that they do. But it appears to me to be dangerous to construe the Penal Code and similar Enactments by reference to similar provisions of English Law. Those responsible for the drafting of the Indian Penal Code deliberately departed from English Law in many important respects and I think one can only look at the Code as it stands and construe it as one would any other enactment. In English law there is for the purpose of the Criminal Law a double standard of negligence. In the judgment of Lord Atkin in *Andrews v. Director of Public Prosecutions* 1937 A.C. 576, it is held that negligence may be great enough to support a conviction for "driving without due care and attention", or for "driving recklessly or at a speed or in a manner which is dangerous to the public", but not great enough to support a conviction for manslaughter. That learned Lord says—"it is perfectly possible that a man may "drive at a speed or in a manner dangerous to the public and cause death and yet not be guilty of manslaughter". I do not think that is possible here. The section contains the words "rash" and "negligent". The latter word is one in common usage, both as a legal term and otherwise. I do not consider that there is any reason for giving it a special meaning in this case.

I would not go so far as to say that the degree of negligence necessary to support a civil action should be applied without reservation. A criminal charge and a civil action should be approached in a different spirit. But English Law has as I have said a double standard of negligence in criminal law, and I do not consider that Section 304A gives any basis for the suggestion that such a double standard should be applied here.

In the present case the learned Magistrate has held that the Appellant was guilty of negligence but not of such negligence as would be considered sufficient for conviction for manslaughter in England. In my opinion the facts of the case disclose a substantial and serious degree of negligence. Whether or no in the present case it would be sufficient for a conviction for manslaughter, it is in my opinion sufficient for a conviction under Section 304A, and the appeal must be dismissed.

Appeal Dismissed.

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, Ag. C.J.

October 6, 1938.

PUBLIC PROSECUTOR v. LYE YEN KHOY.

(SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 75 of 1938)

Sanitary Boards Enactment (Cap. 137) s. 17—Interpretation & General Clauses Enactment, S. 13—Kuala Lumpur Sanitary Board By-laws Part I, By-laws Nos. 37, 40—cubicles not conforming to by-laws—notices requiring alterations to or demolition of—validity of by-laws.

On the first floor of House No. 85 Petaling Street Kuala Lumpur there were seven cubicles used as sleeping places without windows. None of the cubicles had a floor space of 120 square feet as required by By-law 37 of the Kuala Lumpur Sanitary Board By-laws Part I. Notices were served on the owner of the premises requiring him to make alterations to or to demolish such cubicles as did not conform with By-laws 37 and 40. On non-compliance with the notices the owner was charged with offences under Section 17 of the Sanitary Board Enactment but was acquitted by the Magistrate on the ground that the by-laws were **ultra vires.** The Public Prosecutor appealed.

Held, that the by-laws were only intended to apply to the erection of buildings and that if and so far as they were intended to apply to existing buildings they were **ultra vires.**

Municipal Commissioners v. Syed Abdulrahman bin Shaikh Alkaff & Others, 6 M. L. J. 183 referred to.

Hay, Deputy Legal Adviser, for the Appellant.

Hastings for the Respondent.

Cur. Adv. Vult.

Terrell, Ag. C. J.—The respondent in this case was charged as follows:—

"That you being the owner of a domestic building namely No. 85 Petaling Street within the K.L., S.B. area on or about 8.12.37 did fail to comply with the terms of a notice lawfully given to you by the Chairman of the S.B., K.L., under the provisions of By-law No. 45 of the K.L., S.B., By-laws Part I (Gaz: Not: No. 3797 of 24.8.35) on 8.9.37, requiring you within three months from the service thereof to make such alterations in the cubicles and partitions in the said building as should conform to By-laws 37 and 40, Part I of the above-said By-laws or alternatively to demolish all such cubicles as do not

conform to the said By-laws Nos. 37 and 40, and have thereby committed an offence punishable under section 17 of the S.B. Enactment (Cap. 137);

"And that you on or about the 28.2.38 at No. 85 Petaling Street Kuala Lumpur did retain in the domestic building aforesaid seven cubicles not having a direct admission of light from the external air by means of a window in an external wall not less than one-tenth of the size of the floor area of each of the said cubicles and have thereby committed an offence under By-law No. 40 of Part I of the K.L., S.B., By-laws punishable under section 17 of the Sanitary Boards Enactment (Cap. 137)".

The By-laws referred to in the charges were made under the provisions of section 17 of the Sanitary Boards Enactment of 1929, and such By-laws are still operative under the Sanitary Boards Enactment (Cap. 137) by virtue of section 13 of the Interpretation and General Clauses Enactment. The By-laws in question read as follows:—

37. "Any room used as a bedroom or any portion of a room partitioned off for the purpose of being used as a sleeping place, hereinafter referred to as a cubicle, shall have a floor area of at least 120 square feet and length or width of at least seven feet nine inches.

40. "No cubicle shall be constructed or retained in any domestic building unless there is a direct admission of light from the external air by means of a window or windows in an external wall, such day light area to be in size not less than one-tenth of the floor area of the cubicle.

45. "The Board may in the case of existing cubicles or partitions require the owner and occupier or the owner or the occupier by notice in writing to make such alterations as shall conform to these by-laws".

It was proved that on the first floor of the premises in question there were seven cubicles used as sleeping places without windows opening to the external air, and that none of the seven cubicles had a floor space of 120 sq. feet as required by by-law 37. It was also proved that the required notices had been properly served. Prima facie, therefore, the offences charged had been established. The defendant was, however, acquitted by the learned Magistrate on the ground that the by-laws were *ultra vires;* and against this decision the Public Prosecutor has appealed.

I would observe that, if he were justified in so doing by the evidence, it would have been preferable for the learned Magistrate to have recorded a conviction, and then stated a case under the provisions of section 62 (i) of the Courts Enactment, and I so ruled recently in Singapore in the case of *Rex v. Ng Chim Poh,* 7 M.L.J. page 132. The reason for this is that a Magistrate's Court is not a Court of Record, and a decision on a point of law is not binding on any other Magistrate. It follows that if the Public Prosecutor had not appealed against the decision, the Sanitary Board authorities even if advised that the decision was wrong, would have been left in doubt as to the course which they should pursue in the future, and property owners would have been in a similar difficulty.

It was argued by Mr. Hay on behalf of the Public Prosecutor that the by-laws in question were valid because by section 17 (i) (now section 16 (i)) of the Sanitary Boards Enactment the Sanitary Board may make by-laws for the following purposes, amongst others:—

Sec: 15 (i) (a): the regulation and control of buildings and building operations etc., and

Sec: 15 (i) (q): all other matters whether similar or not to those above-mentioned connected with the conservation and improvement of the Sanitary Board area.

Mr. Hay also relied on section 8 (iii) of the Interpretation and General Clauses Enactment, which reads:—

"Where any Enactment confers power on any authority to make Rules for any general purpose and also for any special purposes incidental thereto, the enumeration of the special purposes shall not be deemed to derogate from the generality of the powers conferred with reference to the general purpose".

I do not think that the Interpretation and General Clauses Enactment affects the position, for the reason that the by-laws in question are part of the by-laws with respect to buildings, i.e. they have been made for a special purpose and not for a general purpose. No question, therefore, of restricting the meaning of by-laws made for a general purpose can arise.

The building by-laws are made under the provisions of section 15 (i) (a) as explained and expanded by section 89 (i) of the Enactment, and the special purpose is the control of persons intending to erect or re-erect a building (see section 90 (i)). The by-laws apply where a person erects a building, and in certain cases, specified in section 93 (i) where a person who wishes to make major alterations is "deemed to erect a new building".

Quite apart from the sections of the Enactment above referred to, the fact that the by-laws are intended for this special purpose is the only legitimate conclusion to be drawn from the by-laws themselves. To begin with, as I have mentioned above, the by-laws in question fall under Part I which is headed "By-laws with respect to buildings." Then by-law 1 under 'A'—'General'—(after a proviso excepting certain Government buildings exempted by the Resident from compliance with

the by-laws) commences:— "no person shall erect or commence to erect any building etc." Again, by-laws 37, 40 and 45 fall under 'B' which is headed 'Plans'. This in itself is enough to show that the by-laws in question refer to the erection of buildings. An owner who is in possession of premises which he is not proposing to alter or re-erect, does not require to pass plans.

The case of *Municipal Commissioners v. Syed Abdulrahman bin Shaikh Alkaff & Ors.*, 6 M.L.J., page 183, decided last year by the Singapore Court of Appeal, has some bearing on the principles to be followed. In that case an owner was intending to effect some repairs and alterations to an old building which did not have a verandah way, and the Municipal Commissioners of Singapore refused to pass the plans unless such verandah way was established. They relied on one of the building by-laws No. 121 which reads:—

> "Every person who shall erect a building which abuts on any street or road shall provide a verandah way or an uncovered footway etc.,"

The question for the Court was whether the words 'erect a building' were used in the ordinary sense of 'erecting a new building' or whether the words covered the case of a person who was "deemed to erect a building", because he intended to effect certain repairs. The Court held that if the by-law in question was given the wider meaning contended for, it would be unreasonable and *ultra vires;* but that by-laws should be construed 'benevolently' (*Kruse v. Johnson*, 1898, 2 Q.B. at page 99), and where a by-law is capable of two constructions one of which will make it valid and the other invalid, it ought to receive that interpretation which will support it (per Lord Wensleydale in *R. v. Saddlers Co.*, 32 L.J., Q.B. page 337). Accordingly the by-law was held to apply only to new buildings and as such to be *intra vires*. If the by-law in question could be held to be *ultra vires* if applied to persons who were merely effecting repairs, as distinguished from persons erecting a new building, a *fortiori* it would be *ultra vires* if applied to persons who were neither erecting nor deemed to be erecting a building. Yet this is exactly the contention of the Public Prosecutor with regard to by-laws 37, 40 and 45. Notwithstanding the fact that the building by-laws in general only have relation to new buildings, yet it is argued that, by the peculiar wording of these by-laws, they can equally be applied to existing buildings. As Brett M.R. said in *Attorney General v. Horner*, 14 Q.B.D., page 257:—

> "It is a proper rule of construction not to construe an act of Parliament as interfering with or infringing persons' rights without compensation unless one is obliged so to construe it";

and the same principle applies to the construction of by-laws. I have no hesitation in deciding, therefore, that the by-laws in question are only intended to apply to the erection of buildings, and that if and so far as they are intended to apply to existing buildings they are *ultra vires*.

This does not mean that the Sanitary Board are left without any remedy where cubicles are without ventilation and dangerous to health. It is true that the Sanitary Boards Enactment contains no provision similar to section 236 of the Municipal Ordinance which particularly empowers the Commissioners, upon the certificate of the Health Officer that a building is unfit for human habitation, to give notice to the owner requiring him *inter alia* to do all or any of the following things, viz:—

> "the removal alteration or demolition of the whole or part of the partitions or other erections complained of",

but under section 77 (i) the Chairman of the Sanitary Board is required to take steps to abate nuisances, and 78 (a) enacts that:—

> "any building or part thereof of such a construction or in such a state is to be a nuisance or injurious or dangerous to health"

is a nuisance, liable to be dealt with summarily under the Enactment. It must of course be a question of evidence in each case whether or not a nuisance has been established. Because however there may be some such remedy, that does not justify the Sanitary Board in proceeding under by-laws which, in my opinion, have no application to the matter in dispute.

The appeal is, therefore, dismissed.

Appeal Dismissed.

[REVISIONAL CRIMINAL JURISDICTION]

RAJA MUSA, Ag. J.

November 5, 1938.

PUBLIC PROSECUTOR v. UTAM SINGH.

(NEGRI SEMBILAN MISCELLANEOUS CRIMINAL APPLICATION No. 4 of 1938)

Motor Vehicles (Construction and Use) Rules, 1937, Rules 56, 80—Road Traffic Enactment, Ss. 48, 118 (1) (d)—Interpretation & General Clauses Enactment (Cap. 1), S. 8 (iii)—charge of failing to maintain a motor vehicle in good working order—penalty—absence of specific power given to High Commissioner to prescribe—validity of rules.